

ARTICLE 4

NON-CONFORMING USES, STRUCTURES AND LOTS

4-1 DEFINITIONS - The following categories of non-conformity are hereby established and defined:

4-1(a) NON-CONFORMING USES - Uses of land or structures that were lawful prior to the adoption or amendment of this Zoning Ordinance but would be prohibited, regulated or restricted under this Zoning Ordinance in the zone in which they are located. Included in this definition are uses that would be otherwise permitted in the zone by this Zoning Ordinance, but do not meet the requirements associated with such uses, e.g., parking, open space, and the like.

4-1(b) NON-CONFORMING STRUCTURES - Structures that were lawful prior to adoption or amendment of this Zoning Ordinance but do not conform with the yard, coverage, height or other structural restrictions; including applicable Infill & Redevelopment Area regulations of this Zoning Ordinance for the zone in which the structure is located.

4-1(c) NON-CONFORMING LOTS - Lots of record at the time of adoption or amendment of this Zoning Ordinance that do not meet the minimum lot square footage and/or frontage requirements prescribed for the zone in which the lot is located. Non-conforming lots do not include those within the defined Infill and Redevelopment areas that may be smaller than the required lot size of the zone, provided these lots meet the requirements of the "small lot" provisions contained in each residential zoning category.

4-2 INTENT - It is the intent of this Zoning Ordinance to permit the non-conformities established in Article 4-1 to continue until they are removed, but not to encourage their survival. It is also intended that non-conformities shall not be enlarged or extended beyond the scope and area of their operation at the time of the adoption or amendment of this Ordinance, nor to be used as grounds for adding additional structures or uses not permitted in the same zone. Non-conforming uses are those that are incompatible with permitted uses in the zones in which they are located.

4-3 REGULATION OF NON-CONFORMING USES - A non-conforming use shall be permitted to continue as long as it remains otherwise lawful and shall be regulated as follows:

- (a) No non-conforming use shall be enlarged or extended; nor may the building it occupies be enlarged, extended or rebuilt so as to occupy a greater area of land than was occupied at the date of the adoption or amendment of this Zoning Ordinance. In addition, it may not be altered in any way that would extend or enlarge either the scope or the area of its operation.

- (b) No non-conforming use shall be moved, in whole or in part, to a new location in the lot or parcel except by appeal to the Board of Adjustment under Article 7, Section 6(c).
- (c) When a non-conforming use is discontinued or abandoned, showing a gross lack of diligence in use for one year or more (except when governmental action prevents such use); or when the use is halted for one year or more because of damage, destruction, or demolition of the structure in which the use is located, the non-conforming use may not be resumed. In addition, once the non-conforming use status is lost, the land and/or structure shall not be used except in conformity with the applicable Infill and Redevelopment regulations and the regulations of the zone in which it is located.
- (d) When a non-conforming use is replaced by a permitted use, it shall then conform to the regulations for the zone in which it is located, and the non-conforming use may not be resumed.
- (e) Any non-conforming use may be changed to another non-conforming use by appeal to the Board of Adjustment under Article 7, Section 6(c), provided the proposed use is in the same or a more restrictive classification than the previous use. If the use is located in a building, no structural changes may be made to the exterior of the building.
- (f) When a non-conforming use is halted because of damage, destruction or demolition of the structure in which it is located, the structure may be reconstructed or repaired, but not to exceed the number of square feet of floor area nor the number of cubic feet it contained prior to its damage or destruction.
- (g) Any non-conforming use may be extended throughout any parts of a building that were arranged or designed for such use at the date of the adoption or amendment of this Zoning Ordinance, but in no instance shall a non-conforming use be extended to displace a conforming use nor to occupy land outside such building.

4-4 REGULATION OF NON-CONFORMING STRUCTURES - A non-conforming structure may continue to exist, provided it remains otherwise lawful. It shall be regulated as follows:

- (a) No non-conforming structure may be enlarged or altered in any way that increases its non-conformity, but a

structure may be altered to decrease its non-conformity.

- (b) Should a non-conforming structure or non-conforming portion of a structure be damaged, destroyed or demolished by any means, it may be reconstructed or repaired; but it may not exceed the number of square feet of floor area nor the number of cubic feet it contained prior to its damage, destruction, or demolition.
- (c) Should a non-conforming structure be moved for any reason, for any distance, it shall thereafter conform to the regulations for the zone in which it is located after it is moved. However, said structure may be moved to another location on the same lot by appeal to the Board of Adjustment under Article 7, Section 6(c).

4-5 REGULATION OF NON-CONFORMING LOTS - A non-conforming lot shall be permitted to continue and shall be regulated as follows:

- (a) A non-conforming lot may not be further subdivided or consolidated, either in whole or in part, with another parcel in a manner that increases its non-conformity, but may be altered so as to decrease its non-conformity. However, the Commission may approve the subdivision of a lot, which has two (2) or more legally constructed principal residences, into separate parcels for the purpose of the sale or transfer of the individual residences. This may be done only if the Commission finds that the properties have been used in a separate and distinct manner with separate utilities and other facilities so that the resulting subdivision will not constitute a material change in the use of the property.
- (b) Notwithstanding any portion of this Zoning Ordinance, a non-conforming lot may be used for construction of an otherwise lawfully permitted structure in the zone in which it is located. Such a non-conforming lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.
- (c) If two or more lots have ever had a structure built over the property line in a residential zone; and if any of the lots are non-conforming, both in size and in frontage, the land involved shall be considered to be an undivided parcel, except those complying with the small lot provisions for each zone. No subdivision or consolidation, either in whole or in part, with another lot shall be made of such parcel that reduces the parcel below the requirement for a permitted lot in the zone in which it is located. However, the Commission may permit the sale or transfer of lots where each lot has a legally constructed principal residence. A lot that does not meet the size requirement for the zone in which it is located may still be developed according to the special provisions for small lots, contained in each residential zoning category

4-6 REPAIRS AND MAINTENANCE - On any non-conforming structure or portion of a structure, or in any structure containing a non-conforming use, work may be done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring or plumbing or other parts of the structure, provided that the number of square feet of floor area and the number of cubic feet of the non-conforming structure or non-conforming portion shall not be increased. This Zoning Ordinance shall not be construed to prevent the strengthening, repairing, or restoring to a safe condition of any structure or part thereof.

4-7 CONDITIONAL USES ARE NOT NON-CONFORMING USES - Any existing principally permitted use at the date of the adoption or amendment of this Zoning Ordinance, which would thereafter require a conditional use permit, shall be deemed a conforming use; but any enlargement or replacement of such use shall require a conditional use permit as provided by Article 7-6(a).

4-8 PARKING NON-CONFORMITIES - Shall be regulated as follows:

- (a) Properties within the R-1E or R-1T zone may park within the required front or side street side yards, provided the final record plat was approved by the Planning Commission between December 15, 1983 and December 5, 2002.
- (b) No off-street parking space shall be required for a single family detached residence on any lot redeveloped as defined in Article 15-2(a)(1), when the lot already has no off-street parking space (a non-conforming situation).
- (c) No off-street parking space shall be required within the defined Infill and Redevelopment Area where the Urban County Council has established a designated on-street parking area on a block-by-block basis.